

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB MAY 5, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Community Health Campaign of Pennsylvania

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Serial No. 75/326,518

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David V. Radack of Eckert Seamans Cherin & Mellott, LLC  
for applicant.

Tina L. Snapp, Trademark Examining Attorney, Law Office 105  
(Thomas G. Howell, Managing Attorney).

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Before Cissel, Wendel and Rogers, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Community Health Campaign of Pennsylvania has filed an  
application to register the mark depicted below for  
"charitable fund raising services."<sup>1</sup>

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<sup>1</sup> Serial No. 75/326,518, filed June 24, 1997, claiming a date of  
first use and of first use in commerce of May 1995.

**Ser No.** 75/326,518

Registration has been finally refused on the grounds that (1) the mark as shown on the drawing differs from the mark as shown on the specimens of record and applicant has failed to either amend the drawing or submit new specimens and (2) applicant has failed to submit a disclaimer of the merely descriptive wording "Community Health Campaign." Applicant has appealed the final refusal of registration and both applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Looking first to the drawing, the Examining Attorney maintains that the mark displayed therein is not a "substantially exact representation" of the mark in which applicant has acquired rights by use, as evidenced by the specimens of record. She contends that the mark in the drawing in which the wording "Community Health Campaign" is displayed in three separate lines with only the first letter being capitalized is not the same mark as that shown on the specimens, in which the wording is in a single line and is entirely in capitals. In the specimens the mark is used as follows:

Applicant, on the other hand, argues that its mark consists of the "circle of friends" logo in combination

with the words "Community Health Campaign," and that the positional relationship of the three words has no effect on the overall commercial impression of the mark. Thus, according to applicant, the mark in the drawing is a "substantially exact representation" of the mark used on the specimens.

Under Trademark Rule 2.51(b)(1), in an application filed under Section 1(a), "the drawing of a service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services." Because the specimens of record show the mark which is actually being used in commerce, the mark depicted in the drawing must conform with the mark shown in the specimens. See *In re ECCS Inc.*, 94 F.3d 1578, 39 USPQ2d 2001 (Fed. Cir. 1996).

We agree with the Examining Attorney that there is an obvious disparity between the manner in which the wording "Community Health Campaign" is aligned in the special form drawing and in the specimens. Placing each word in a separate line with only the first letter being emphasized by capitalization is not a "substantially exact representation" of the three words arranged in a single line with all letters being capitalized. Whether the overall commercial impression is the same is not the test.

Instead, it is a much stricter standard, whether or not the drawing is a "substantially exact representation" of the mark in use.

Applicant might well have amended the drawing to conform to the mark shown in the specimens on the basis that the overall commercial impression was the same, since the test for amendment under Trademark Rule 2.72(a)(2) is whether the proposed amendment materially alters the mark depicted in the original drawing. The mark for which registration is sought, however, must be a "substantially exact representation" of the mark being used by applicant. This is the mark in which applicant has acquired rights. Accordingly, the refusal to register on the ground that the mark shown in the drawing is not substantially the same as the mark shown on the specimens of record is affirmed.

Turning to the requirement for a disclaimer, the Examining Attorney argues that the wording "Community Health Campaign" is merely descriptive when used in connection with applicant's charitable fund raising services. As support for her position, the Examining Attorney relies upon a dictionary definition of the term "campaign" as an "operation or series of operations energetically pursued to accomplish a purpose," and statements in the specimens referring generally to use of

the collected funds for local health agencies or to help people in the community. She points out that the agencies listed under applicant's particular "Community Health Campaign" are specifically directed to health problems, these agencies including the Alzheimer's Association, South Pennsylvania Chapter; the American Cancer Society, Capital Region; and the Cystic Fibrosis Foundation, Central PA Chapter. In addition, the Examining Attorney has made of record Nexis database excerpts demonstrating use of the term "campaign" in conjunction with "community health," of which the following are representative:

...immunization for children. It was not ascertained, however, whether immunizations were provided on an ongoing basis or administered as part of a community health campaign. *Journal of School Health* (October 1997);

...center - which provides acute care services to rural Robeson's 105,000 residents - is in midst of a well-supported campaign to improve the overall community health. *Healthcare Executive* (July/August 1996); and

To a large extent, hospital philanthropic campaigns target specific community health needs. But some institutional capital needs can't be funded solely by income from patient care services. *Hospitals & Health Networks* (Sept. 20, 1994).

In view of this evidence, she argues that "Community Health Campaign" merely describes or communicates to consumers the focus of applicant's fund raising services.

Applicant maintains that the wording is only suggestive, in that "Community Health Campaign" by itself does not immediately convey information as to the nature of applicant's services. Applicant argues that the excerpts relied upon by the Examining Attorney show use of the terms "campaign" and "community health" in connection with various health services, not fund raising activities. Applicant contends that when its mark is viewed by the persons to which it is directed, namely persons being solicited to make contributions, it will require thought and imagination for them to reach a conclusion as to the fund raising nature of applicant's services.

A word or phrase is merely descriptive within the meaning of Section 2(e)(1) of the Trademark Act if it immediately conveys information about a characteristic, purpose, function or feature of the goods or services with which it is being used. Whether or not a particular term or phrase is merely descriptive is not determined in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the mark is being used, and the significance the mark is likely to have, because of the manner in which it is used, to the average consumer as he encounters the goods or services bearing the mark. See *In re Abcor Development Corp.*, 588

F.2d 811, 200 USPQ 215 (CCPA 1978); In re Nibco Inc., 195 USPQ 180 (TTAB 1977) and the cases cited therein.

Thus, we must determine whether or not the phrase "Community Health Campaign" is merely descriptive when used in connection with applicant's charitable fund raising services. The question is not whether the phrase standing alone would convey the information that applicant provides a fund raising service, as opposed to another type of health service. From the evidence made of record by the Examining Attorney, as well as the manner of use of the mark in the specimens, we are convinced that the wording "Community Health Campaign" would immediately convey the information to potential contributors that this is a campaign to raise funds for the benefit of community health. The wording is merely descriptive of a major purpose or feature of applicant's fund raising services.

Accordingly, the requirement for a disclaimer of the wording "Community Health Campaign" is proper and the refusal to register because of applicant's failure to submit a disclaimer is affirmed.

Decision: The refusal to register is affirmed on both grounds.<sup>2</sup>

R. F. Cissel

H. R. Wendel

G. F. Rogers  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board

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<sup>2</sup> We note that under Trademark Rule 2.142(g) the Board has the jurisdiction to permit the entry of a disclaimer after the issuance of its decision. The Board cannot, however, reopen the application for any other purpose and accordingly cannot entertain any amendment to the drawing. Applicant may file another application and include both the disclaimer and a proper drawing.